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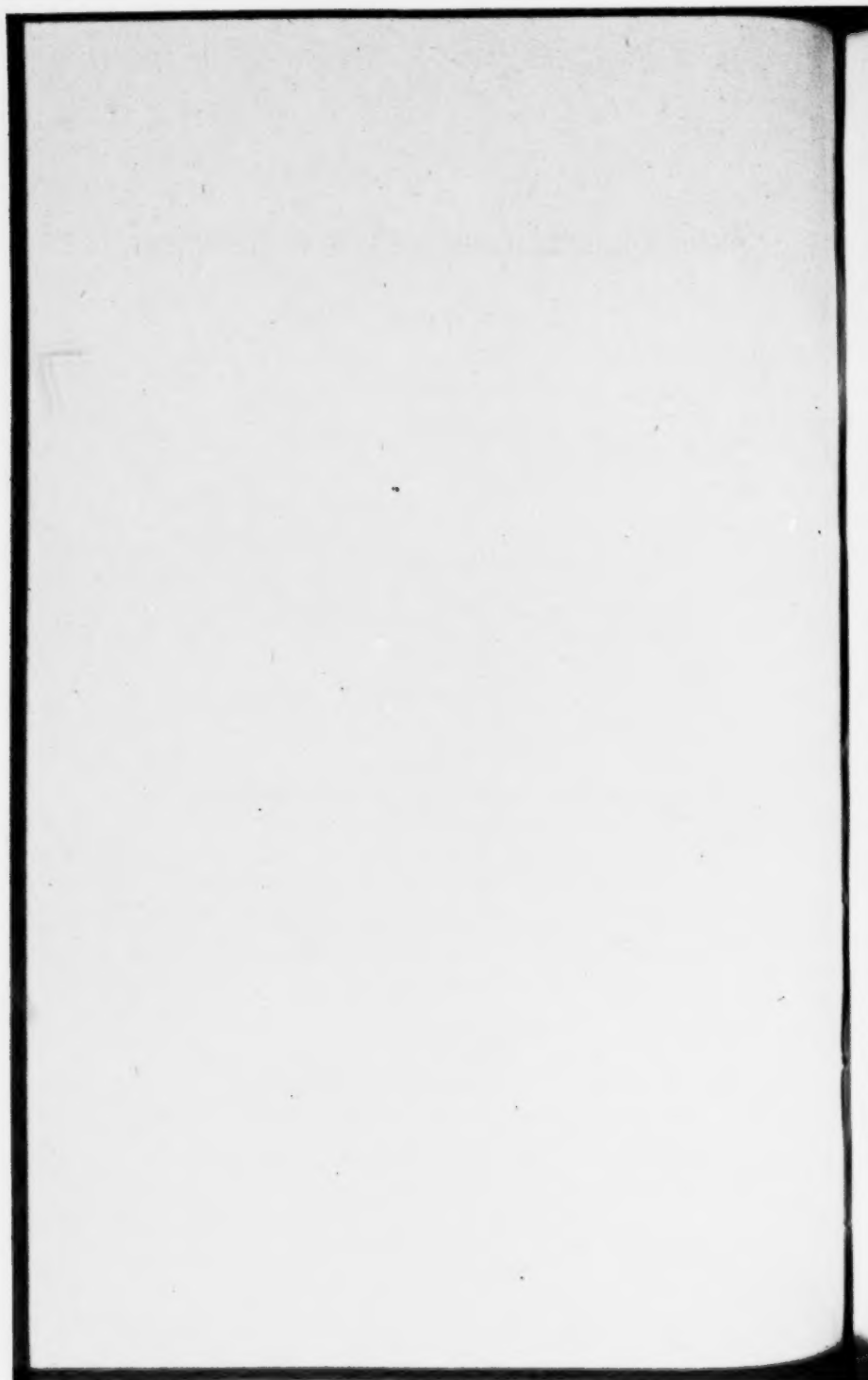
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# **In the Supreme Court of the United States**

OCTOBER TERM, 1946

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No. 1139

WILLIAM I. HEFFRON, TRUSTEE IN BANKRUPTCY OF  
THE ESTATE OF BERT O. ADAMS, DOING BUSINESS  
AS ADAMS-SHEETZ DRIVE INN STAND, BANKRUPT,  
RUTH ADAMS AND BERT O. ADAMS, PETITIONERS

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## **OPINIONS BELOW**

The District Court wrote no opinion. The opinion of the Circuit Court of Appeals (R. 62-64) is reported in 158 F. 2d 657.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on January 7, 1947. (R. 65.) The petition for a writ of certiorari was filed on March 19, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

Whether federal tax liens attach to the interest of a bankrupt in property held by him in joint tenancy with his wife which has been declared a homestead under state law.

**STATUTE INVOLVED**

Bankruptcy Act of 1898, c. 541, 30 Stat. 544, as amended by the Act of June 22, 1938, c. 575, 52 Stat. 840:

*SEC. 67. Liens and fraudulent transfers.—*

\* \* \* \* \*

(b) The provisions of section 60 of this Act to the contrary notwithstanding, statutory liens in favor of employees, contractors, mechanics, landlords, or other classes of persons, and statutory liens for taxes and debts owing to the United States or any State or subdivision thereof, created or recognized by the laws of the United States or of any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy or of the original petition under chapter X, XI, XII, or XIII of this Act, by or against him. Where by such laws such liens are required to be perfected and arise but are not perfected before bankruptcy, they may nevertheless be valid, if perfected within the time

permitted by and in accordance with the requirements of such laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court.

\* \* \* \* \*

(11 U. S. C. 1940 ed., Sec. 107.)

#### STATEMENT

The facts were concisely summarized by the Circuit Court of Appeals sufficiently for the purposes herein, as follows (R. 62-63):

On December 21, 1942, Bert O. Adams and Ruth Adams, husband and wife, residents of California, acquired title to some real property in Inglewood, California. By a declaration executed, acknowledged and filed for record on November 5, 1943, they selected that property as their homestead. Prior to June 2, 1944, federal taxes—withholding taxes, insurance contributions taxes, unemployment insurance taxes and coin-operated amusement device taxes—aggregating more than \$12,000 were assessed against Bert O. Adams. On June 2, 1944, Bert O. Adams was adjudged a bankrupt. The case was referred, and William I. Heffron was appointed trustee. On October 20, 1944, the United States filed its claim in bankruptcy for the taxes assessed as aforesaid. On or about November 7, 1944, the trustee sold the homestead property, free and clear of liens, for \$8,935.92, subject to the bank-

ruptcy court's approval. On December 6, 1944, the referee in bankruptcy entered an order approving the sale. On April 26, 1945, the referee entered an order directing that the proceeds of the sale (\$8,935.92) be distributed as follows: \$6,967.96 to Ruth Adams and \$1,967.96 to the Collector of Internal Revenue.

From a judgment affirming the referee's order of April 26, 1945, the United States appealed (R. 52), and the court below reversed (R. 62-64).

#### ARGUMENT

1. The decision of the court below is in accord with *In re Pennsylvania Central Brewing Co.*, 135 F. 2d 60, 63-64 (C. C. A. 3d), which holds that the federal taxes assessed constituted liens in favor of the Government upon all property of the bankrupt, including his interest in the homestead property and the proceeds from the sale thereof. *Kieferdorf v. Commissioner*, 142 F. 2d 723 (C. C. A. 9th), certiorari denied, 323 U. S. 733. *Cannon v. Nicholas*, 80 F. 2d 934, 935 (C. C. A. 10th); *Kyle v. McGuirk*, 82 F. 2d 212, 213 (C. C. A. 3d); *Shambaugh v. Scofield*, 132 F. 2d 345, 346 (C. C. A. 5th); *Jones v. Kemp*, 144 F. 2d 478, 480 (C. C. A. 10th).

Contrary to petitioners' contention, ownership of the property herein has been determined according to California law. As the court below stated in the opinion, the Government conceded that the interests of the bankrupt taxpayer and

his wife, Ruth Adams, in the homestead property were equal interests so that one-half (\$4,467.96) of the total amount of the proceeds (\$8,935.92) received from the trustee's sale, should be distributed to her as representing her interest in the homestead property (R. 63). The question presented is how should the other one-half be distributed. We submit that one-half of the proceeds of the sale represents the bankrupt's interest in the homestead property, and that it is subject to the valid liens for federal taxes, as the Circuit Court of Appeals held (R. 63-64).

It follows that if by the joint declaration of the homestead upon the property held by the bankrupt and his wife in joint tenancy she acquired a \$2,500 interest in his portion of the property, as the wife contends, the bankrupt likewise acquired a like interest in her part thereof, to which the federal tax liens attached prior to bankruptcy. Under state law a husband acquires the same interest in a wife's homestead as the wife acquires in his homestead. *Baker v. Superior Court*, 120 Cal. App. 1; Sec. 1265, California Civil Code (Deering, 1937); Sec. 663, California Probate Code (Deering, 1931). Thus it is apparent that the decision of the court below has limited the federal tax liens to the bankrupt's interest in the property.

2. The court's holding that exemptions prescribed by state laws are ineffective against federal tax liens (R. 64) is correct and in accord

with the decisions. See Sec. 67 (b) of the Bankruptcy Act (11 U. S. C. 1940 ed., Sec. 107), *supra*; *Heyward v. United States*, 2 F. 2d 467 (C. C. A. 5th); *In re MacKinnon Mfg. Co.*, 24 F. 2d 156 (C. C. A. 7th); *In re Pennsylvania Central Brewing Co.*, *supra*. In fact, the petitioners do not contend that the homestead interest of the husband is exempt from federal tax liens under the bankruptcy statute. (Br. 16.) They admit that the bankrupt has waived any exemption in favor of his estate. (Br. 16.)

#### CONCLUSION

The decision of the court below is in accord with the decisions of other courts. The petition presents no conflict of decisions, and shows no other reason for certiorari. The petition for certiorari should therefore be denied.

Respectfully submitted.

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APRIL 1947.